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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 2, 2002

APPLICATION OF

CITY OF BRISTOL,  
d/b/a BRISTOL VIRGINIA UTILITIES  
BOARD

CASE NO. PUC020009

For a Certificate of Public Convenience  
and Necessity to Provide Resold and  
Facilities-Based Local Exchange  
Telecommunications Services and Resold  
Interexchange Services Within the  
Commonwealth of Virginia

ORDER

The City of Bristol, Virginia ("Bristol" or "Applicant"), applied in this docket for a certificate of public convenience and necessity to provide certain telecommunications services within the Commonwealth of Virginia (hereafter "Application"). By motion dated February 20, 2002, the Staff of the Virginia State Corporation Commission (hereafter "Staff" and "Commission," respectively), moved pursuant to Rule 110 of the Commission's Rules of Practice and Procedure (5 VAC 5-20-110) to dismiss Bristol's Application on the grounds that the Commission lacks jurisdiction over Bristol with respect to such certification.

By way of background, on January 25, 2002, the Applicant filed with the Clerk of this Commission, an Application for a certificate of public convenience and necessity to provide facilities-based and resold local exchange telecommunications services and resold interexchange telecommunications services within the Commonwealth. The Application was filed under the provisions of the Utilities Facilities Act ("Facilities Act"), Chapter 10.1 (§ 56-265.1, et seq.) of

Title 56 of the Code of Virginia.<sup>1</sup> It is under the Facilities Act that this Commission issues the certificates Bristol seeks herein.

The Staff's motion is predicated on the specific exclusion of municipal corporations from the Commission's jurisdiction under the Facilities Act (specifically, § 56-265.1(a)).

Consequently, the Staff emphasizes, without such jurisdiction it would be inappropriate for this Commission to proceed further with this Application.<sup>2</sup> The Staff also noted in its motion that legislation then pending before the 2002 Session of the Virginia General Assembly may authorize the Commission to review such certificate applications by municipal corporations, thereby making applications like the one before us appropriate, if not required, in the future.<sup>3</sup>

During the pendency of the Staff's motion (and while the Staff's February 7, 2002, memorandum was outstanding), however, Bristol, by its counsel, filed with the Clerk of the Commission a letter dated March 22, 2002, seeking leave to withdraw its Application. Bristol's counsel also notes in this letter that "[B]ristol is aware that legislation is awaiting the Governor's review, and will, if required by the legislation, file an application to provide the above-mentioned services in the future."

NOW THE COMMISSION, for good cause shown by the Applicant, is of the opinion and finds that Bristol's request to withdraw its Application should be granted. Consequently, there being no cause to address the Staff's motion on the merits, we will dismiss Bristol's Application, without prejudice.

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<sup>1</sup> Procedurally, we also note that by memorandum dated February 7, 2002, the Staff advised Bristol that its Application was incomplete.

<sup>2</sup> Staff Motion at pp. 2,3.

<sup>3</sup> Id., at pg. 3.

Accordingly, IT IS ORDERED THAT:

- (1) Upon its request therefore, Bristol's Application is dismissed, without prejudice.
- (2) The papers herein are passed to the file for ended causes.